

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

MEnD Correctional Care, PLLC,

Debtor.

)  
) Chapter 11  
)

) BKY 22-60407-mer  
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) **PATIENT CARE OMBUDSMAN'S**  
) **IMMEDIATE INITIAL REPORT**  
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Pursuant 11 U.S.C. § 333 of the United States Bankruptcy Code (the “**Code**”) to this court’s December 29, 2022, *Order Approving Appointment of Susan N. Goodman as Patient Care Ombudsman* [Docket No. 30] (the “**Appointment Order**”), Susan N. Goodman was selected to serve as the Patient Care Ombudsman (“**PCO**”) in the above-captioned case.

PCO was directed to monitor the quality of inmate patient care through interviewing Debtor, jail staff, and others with relevant information. While the Appointment Order directs PCO to file her report within sixty days of appointment, she must file a report sooner if the assessment suggests that inmate care is compromised by the bankruptcy circumstances.

PCO began speaking directly with Debtor jail customers on January 6, 2023. PCO utilized the customer list that was included in the schedules associated with the Chapter 11 filing. Twenty-six jail customers were listed, although Debtor counsel indicated that some locations had already transitioned off from the Debtor’s services.

To date, PCO has spoken directly to twenty-four of the twenty-six jail customers, some more than once. Additionally, PCO spoke with Dr. Leonard, the Debtor Director of Nursing (“**DON**”), two MEnD nurses, and one assistant state’s attorney. PCO comes now to file this initial report, reserving the right to supplement this report with any further material information gained through the remaining jail staff interviews.

**CUSTOMER AND DEBTOR ACKNOWLEDGEMENT**

PCO acknowledges the urgency and transparency demonstrated by the jail teams. Without exception, jail leadership reported active efforts to identify and move forward with a new provider

solution since receiving Debtor's December 2022 notice of service cancellation (attached herein as "**Exhibit A**"). Further, Debtor leadership and staff made themselves available to PCO and engaged in frank discussions regarding staffing and financial challenges. While PCO has not spoken to most of the direct care team members, she is aware that all team members are missing at least one paycheck with approximately 30% of the team missing two paychecks. Yet, despite these very personal impacts, most team members have continued to work without call-offs. These dedicated individual and collective efforts deserve recognition and appreciation.

### **DEBTOR CUSTOMER'S**

Of the twenty-six customers listed in the schedules, twenty-one jails are in Minnesota. One jail is in Illinois. Three are in Iowa, and one jail is in South Dakota (just west of Montevideo, MN). Debtor also previously served jails in Wisconsin, although those customers ceased services before PCO's appointment.

While the customer base is described as serving rural jail locations, some of the jails are sizeable. Most notably, the Illinois location reported housing over 300 inmates, such that healthcare services were provided from 0600 – 2230 on weekdays and for eight hours on each of the weekend days. The Minnesota customer base also included several larger jails<sup>1</sup>. Generally, however, larger Minnesota customer locations had inmate populations of 40 – 70 inmates per day, with smaller institutions having roughly a total of twenty beds servicing, on average, approximately ten inmates per day.

Debtor contracts included nursing services, mental health support with social worker/counselor level staff, clinician support, and 24/7 on-call support. A few of the larger systems also employed technician staff to assist with medication administration.

### **SERVICE TRANSITION STATUS**

Of the twenty-four customers PCO spoke with individually, fifteen relayed date-certain transition dates to alternative health services on or before January 31, 2023. Two locations reported

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<sup>1</sup> For examples, Kandiyohi County is a 190-bed facility with an inmate population of 150.

having board meetings in mid-January seeking county approval to transition services. Two reported February 2023 provider transition dates. Five jails did not have definitive transition plans or dates.

PCO has yet to speak personally with two jail locations. Dr. Leonard and Debtor staff reported that one of these locations already transitioned their healthcare services. PCO has no specific transition information on the remaining location (yet does note Dr. Leonard reports a provider has been identified with no transition date yet).

Conservatively, there may be as many as ten Debtor customers who continue to need healthcare assistance from the Debtor in February. Assuming a best-case scenario, PCO estimates five to seven Debtor customers will remain in need of services into February 2023.

### **PAYROLL AND INSURANCE COVERGE CONCERNS**

Jail customers are billed for services at the beginning of the month. They do not pay in advance. By the time bills cycle through the county approval and payment systems, the Debtor receives the bulk of the monthly payments by the third week of the month. Since December, the Debtor has struggled to make payroll payments on time. Payroll is paid bi-monthly (on the 1<sup>st</sup> and 15<sup>th</sup>). At the time of this report filing, only 70% of the staff received paychecks for the January 2, 2023, payroll and no employees were paid on January 16, 2023. As receivables come in, the Debtor reported paying the employees with the lowest hourly wages first, paying as many staff as possible with the monies received. As such, nurses, clinicians (mental health and medical providers), and administrative staff were the groups who were last paid on December 16, 2022.

One customer reported covering their nurse's payroll to avoid an abrupt cessation of clinical coverage. A second customer reported driving their December payment to the corporate office in the hope that doing so would get their nurse paid more quickly.

Since PCO's appointment, one abrupt nurse departure was reported as related to the late payroll payments. A regional nurse covering Iowa and Illinois customers also reported submitting her resignation effective January 31, 2023. Both the Debtor Director of Nursing ("**DON**") and the Assistant Director of Nursing ("**ADON**") were reported as assisting with providing shift coverage for jails that experienced nurse departures.

Nurses with several years or more of tenure with the Debtor reported having employment contracts that included full-payment of accumulated paid-time-off (“**PTO**”) so long as they were considered an employee-in-good-standing at the time of employment termination. Nurses are questioning whether they will receive these monies with reported PTO “banks” of as much as 100 – 300 hours reported.

PCO was forwarded an email from the Debtor DON whereby a customer was notified in writing that the Debtor may not have continued liability insurance coverage for February. Should this coverage lapse, the Debtor reported having to cease operations immediately. Those jails without firm transition plans and those with February service-transition dates will be impacted. As estimated previously, PCO’s believes five to ten jails would be impacted.

Jail teams that would be affected by an early cessation of services reported various mitigation strategy planning including direct employment of clinical staff, working with other jail partners for emergency support, and exploring public health and/or local hospital support. The biggest concern was physician oversight for nursing services and availability of liability insurance coverage.

### **MEDICAL RECORDS**

One jail customer reported utilizing an electronic health record (“**EHR**”) called Fusion. They had logistical questions surrounding continued electronic record access after anticipated service termination with the Debtor. While they had received assurances from the Debtor that they could either data migrate the records in a read-only (pdf) format or in electronic format to a new medical record system, PCO shared the customer concern that a definitive record transition plan was needed. PCO encouraged the location to reach out directly to the EHR vendor. At the time of report filing, the jail customer reported being in contact with the EHR vendor representative and working on a record transition plan.

The other jail customers reported having paper medical record documentation that was ultimately scanned in the jail system and stored electronically. As such, these locations did not raise and record continuity concerns. PCO will remain engaged on the issue of medical records should she discover that any other locations have individual challenges that need to be facilitated.

### SUMMARY AND NEXT STEPS

PCO's main objective in submitting an immediate interim report is to ensure that the court is aware of the challenges associated with timely payroll payments and, possibly, continued insurance coverage in February. At this juncture, PCO does not feel that performing individual site visits if of much benefit relative to the additional administrative burden such visits create when paychecks are delinquent and continued insurance coverage is at risk. All twenty-six jail locations have been provided PCO's email and direct cell contact information. PCO will continue to monitor those locations still finalizing transition plans, updating the court with supplemental reports if needed. PCO will also send a copy of this report to all jail administrators.

DATED: January 17, 2023.

By: /s/ Susan N. Goodman, RN JD

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### CERTIFICATE OF SERVICE

I, Susan N. Goodman, hereby certify that a copy of this document has been electronically filed with the Clerk of Court using the Court's electronic case filing system and a true and correct copy of this pleading has been sent to the following parties or counsel of record who have registered to receive electronic service.

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By: /s/ Susan N. Goodman, RN JD

**MEnD Correctional Care****"Correctional Care Revolutionized"**

December 1, 2022

Re: 90-day notice for termination of services

Dear Customer,

In follow up to our recent conversation, it is with great sadness that MEnD announces that they are terminating correctional healthcare services with your facility within the next 90 days. This notice will place our last day of services for March 1, 2023. MEnD will use all reasonable means to ensure that appropriate medical services coverage in place during this period of time, however it is also in your county's best interest to work expeditiously in securing a new correctional healthcare delivery service, as labor market changes can affect our ability to retain all of our staff during this challenging time.

MEnD is foregoing any existing employee "non-compete" contractual clause obligation and is certainly supporting and promoting all staff in continuing their career in correctional healthcare. Moreover, if your county does retain correctional healthcare services before our 90-day notice concludes, we are welcoming of negotiations to end our services earlier.

While the decision to cease MEnD's operations was extremely difficult and painful, we want to reiterate that this decision had nothing to do with the excellence of service and performance from our dedicated and hardworking medical staff. We couldn't be prouder of the care that this team has provided together for over thirteen years. With multiple national accreditations, along with the thanks and response we have received over the years from both county clients and our individual patients, we hope that the legacy of our service lives on with all of you. I thank you personally for your partnership and collaboration with me and our team.

Sincerely,



Todd Leonard MD CCHP-P

MEnD Correctional Care PLLC



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